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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937 ⁸

No. 815

10

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR NO.
18-3306511, COMMERCIAL CREDIT COMPANY, CLAIM-
ANT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 25, 1938
CERTIORARI GRANTED APRIL 4, 1938

SUPREME COURT OF THE UNITED STATES

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TRANSCRIPT OF RECORD

INTRODUCTION.

THE UNITED STATES OF AMERICA,
Western District of South Carolina, to wit:

At a District Court of the United States for the Western District of South Carolina, begun and held at the Federal Building in the City of Spartanburg on the 26th day of June, in the year of our Lord one thousand, nine hundred and thirty-seven.

PRESENT: The Honorable C. C. Wyche, United States District Judge for the Western District of South Carolina.

Among other were the following proceedings, to wit:

STIPULATION OF COUNSEL.

(2) Filed August 31, 1937.

UNITED STATES OF AMERICA,
Western District of South Carolina.

IN THE DISTRICT COURT.

United States of America,

vs.

L. 2612

One 1936 Model Ford V-8 DeLuxe
Coach, Motor No. 18-3306511—
Owned, or supposed to be owned
by Benjamin Guy Walker and
Archie Williams.

It is hereby stipulated by counsel that the automobile in this case was legally seized, regularly proceeded against in a proceeding under the statute for forfeiture, and that in said proceeding said automobile was for-

2 UNITED STATES OF AMERICA, APPELLANT, vs.

feited to the United States of America by order duly entered in said case, and that said order of forfeiture is in all respects valid.

(Signed) HICKS & JOHNSTON,
Attorneys for Claimant,
Commercial Credit Com-
pany.

O. H. DOYLE,
United States Attorney.

Greenville, S. C.,
August 26th, 1937.

RETURN TO LIBEL.

(3) Filed January 22, 1937.

UNITED STATES OF AMERICA,
Western District of South Carolina.

IN THE DISTRICT COURT.

United States of America,

vs.

One 1936 Ford V-8 DeLuxe Coach,
Motor No. 18-3306511—Owned or
supposed to be owned by Ben-
jamin Guy Walker and Archie
Williams.

To the Honorable Judges, United States District Court
for the Western District of South Carolina:

The claimant, Commercial Credit Company, a cor-
poration chartered under the laws of the State of South
Carolina, making a return to the libel of the United
States of America in the above-entitled matter, respect-
fully shows:

I.

That the Commercial Credit Company is a corporation

duly chartered under the laws of the State of South Carolina, with one of its principal places of business in Greenville, South Carolina.

II.

That upon information and belief it admits Paragraphs 1 and 2 of the libel.

III.

That on or about October 3rd, 1936, Landrum P. Walker, of Echols Street, Greenville, South Carolina, purchased the Ford Coach described hereinabove, from the Greenville Auto Sales, Incorporated, of Greenville, S. C., trading in a 1934 Ford Coach at a valuation of Three Hundred Twenty-Five (\$325.00) Dollars, leaving (4) a balance due of Five Hundred Twenty (\$520.00) Dollars, payable in twenty (20) equal monthly installments of Twenty-Five (\$25.00) Dollars each, and one (1) installment of Twenty (\$20.00) Dollars, beginning November 3rd, 1936, which was evidenced by a certain note and mortgage given by Landrum P. Walker to the Greenville Auto Sales, Incorporated, dated October 3rd, 1936.

That said note and mortgage, or conditional sales agreement, was offered to your claimant, the Commercial Credit Company, who, before purchasing same, had an exhaustive investigation made by two or more credit agencies, of Landrum P. Walker, especially with reference to dealing in alcoholic liquors and such information was to the effect that he did not handle or have any connection with alcoholic liquors. That, therefore, it purchased said note and mortgage from the Greenville Auto Sales, Incorporated, and is now the bona fide holder of said note and mortgage, for value before maturity; and there is a balance due by the said Landrum P. Walker on the said automobile, of Four Hundred Ninety-Five (\$495.00) Dollars.

WHEREFORE, the Commercial Credit Company, a corporation, respectfully prays:

(1) That the above-described automobile he turned over to it under the terms of its mortgage; or,

(2) That they be paid the sum of Four Hundred Ninety-Five (\$495.00) Dollars, which is the balance due on said automobile; and,

(3) For such other and Further relief as may be deemed just and equitable.

/s/ HICKS AND JOHNSTON,
Attorneys for the claimant,
Commercial Credit Company,
a corporation.

State of South Carolina,
(5) County of Greenville.

PERSONALLY APPEARS before me R. P. Johnson, who, after being duly sworn, says: That he is the manager of the Greenville Branch of the Commercial Credit Company; that he has read the allegations in the foregoing Return, and knows that they are true, except as to those matters which are alleged to be upon information and belief, and as to those he believes them to be true.

/s/ R. P. JOHNSON.

SWORN TO AND SUBSCRIBED before me this the 22nd day of January, 1937.

(Notarial Seal) /s/ MARY M. RAST (Seal)
Notary Public for S. C.

Service Accepted

Greenville, S. C.

Jan. 22, 1937

/s/ E. P. RILEY, Asst. U. S. Atty.
Attorney for United States

OPINION.

(6) Filed June 5, 1937.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF SOUTH CAROLINA.

United States of America,

v.

L/2612

One 1936 Model Ford V-8 DeLuxe
Coach, Motor No. 18-3306511—
Owned or supposed to be owned
by Benjamin Guy Walker and
Archie Williams.

On December 3, 1936, officers of the Alcoholic Tax Unit seized a 1936 Ford V-8 DeLuxe Coupe, Motor No. 18-3306511 on the ground that it was being used by one Benjamin Guy Walker in the unlawful transportation of distilled spirits upon which the federal tax had not been paid. An indictment subsequently charged him with such violation of the Internal Revenue laws, to which he plead guilty and upon which he was thereafter duly sentenced in this court.

A libel was filed by the United States of America for the forfeiture of the automobile under section 3450 of the Revised Statutes, 26 U. S. C. A. 1156 and 1441. The Commercial Credit Company, having an interest in the automobile under a conditional sales contract, of which it is the assignee, intervened and duly made return to the libel, admitted the material allegations thereof, and prayed for a remission or mitigation of forfeiture under the provisions of 27 U. S. C. A. 40a.

A jury trial was waived and the matter was heard by me at Spartanburg, South Carolina, on the 3rd day of May, 1937. The facts practically undisputed, as disclosed by the evidence introduced at the trial, are as follows:

The Ford automobile was sold by the Greenville Auto

Sales, Incorporated (hereinafter referred to as the dealer) on October 3, 1936, through its agent, to Benjamin Guy Walker, who in part payment of the purchase price of the Ford automobile exchanged an old car paid (7) for by him, but registered in his wife's name. He was given terms for the payment of the purchase price under a conditional sales contract, but the contract, drawn by an agent of the dealer, was made in the name of his brother, Landrum P. Walker, who formally executed the agreement by signing it "L. P. Walker", and who was commonly known as Paul Walker. Benjamin Guy Walker and his wife at the time of the sale were having some domestic infelicities and he had the conditional sales contract drawn and executed in the name of his brother in order to place the title of the new automobile "where his wife could not reach it". Landrum P. Walker had no interest in the transaction except to comply with the request of his brother. Guy Walker made the transaction with the dealer through its agent, Mr. Elrod. He selected the car he wanted, made the agreement and handled the transaction himself. Paul Walker drove the car from the place of business of the dealer. Guy Walker at the time, and for two or three weeks after the purchase of the car, was living at the home of his brother. Only one payment was made on the conditional sales contract before the seizure, and that was made by Guy Walker to the dealer.

It was admitted by all the parties that Benjamin Guy Walker had a previous record and a reputation for violating both the state and federal laws relating to liquor. His brother, Paul Walker, was convicted of violating the National Prohibition Act in 1929, and was duly sentenced therefor in this court, but his record and reputation since serving the sentence imposed were good.

On the date the sale was consummated the dealer submitted the contract to the Commercial Credit Company, (8) the claimant here, who accepted by telephone, and subsequently on October 5th, in the usual course of business the dealer assigned the contract to the claimant and received a check for the same.

The claimant before accepting the assignment of the sales contract from the dealer made an investigation of

Landrum P. Walker by inquiring at the headquarters of the Sheriff of Greenville County, and at the headquarters of the Chief of Police of the City of Greenville, the County and City where the interest was acquired and the locality where Landrum P. Walker resided, as to the record and reputation for violation of the liquor law by Landrum P. Walker. The information was received from such offices that Landrum P. Walker had no such record or reputation. The information was given, however, from the Sheriff's office that Guy Walker had both a record and a reputation as a violator of the state and federal laws relating to liquor. No inquiry or investigation was made at the headquarters of the principal Federal internal-revenue officer engaged in the enforcement of the liquor laws in that locality, or at the headquarters of any other principal local or federal law enforcement officer of the locality as to Paul Walker, and no inquiry or investigation whatsoever was made of Benjamin Guy Walker, the admitted real owner and purchaser of the automobile.

The claimant had Landrum P. Walker investigated in August, 1936, by the Business Service Bureau of Greenville, South Carolina, in connection with his purchase of a refrigerator. However, no investigation at that time was made as to whether or not he had a reputation or record for violating the liquor laws; the investigation did disclose that he had a good reputation in the community where he lived; and such was the reputation given him by his employer at that time.

The claimant purchased the conditional sales contract (9) in good faith, believing that Landrum P. Walker was the purchaser and owner of the automobile. It had no knowledge, information or suspicion of the true facts until after the automobile had been seized by federal officers.

The automobile is subject to forfeiture under the statute. (26 U. S. C. A. 1441) *Grant v. United States*, 254 U. S. 505, 41 S. Ct. 189, 65 L. Ed. 376; *United States v. One Ford Coupe Automobile*, 272 U. S. 321, 329 47 S. Ct. 154, 71 L. Ed. 279, 47 A. L. R. 1025.

The claimant asks for remission or mitigation of for-

feiture on the ground that it is an innocent purchaser of the contract in good faith, without any knowledge or reason to anticipate an illegal use of the car and relies upon the recent Act of Congress, known as Liquor Law Repeal and Enforcement Act of August 27, 1935, 49 Stat. 872, sec. 204 (27 U. S. C. A. 40a) which provides as follows:

“(a) Jurisdiction of court. Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.

“(b) Conditions precedent to remission or mitigation. In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged (10) in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.”

The only question involved in this case is whether the

facts present a reasonable basis for the exercise by this court of the power created by the foregoing statute to remit or mitigate the forfeiture.

The claimant has an interest in the automobile which was acquired in good faith. The claimant had at no time any knowledge or any reason to believe that the automobile was being, or would be used in violation of the laws of the United States, or any state relating to intoxicating liquors. The first two requirements of the statute have thus been complied with. The controversy, therefore, revolves around subdivision (3) of the statute.

It is claimed by counsel for the United States that this court should not allow the claim for remission or mitigation because the real purchaser of the automobile was Benjamin Guy Walker, who had a record and reputation for violating both the state and federal laws relating to liquors; because the claimant made no effort to investigate the true facts of the transaction under which the said automobile was sold and the ownership transferred to Benjamin Guy Walker, and made no investigation or inquiry of his record and reputation for violating the liquor laws.

The recent decision of the Circuit Court of Appeals of this Circuit in the case of C. I. T. Corporation v. United States of America, decided May 7, 1937, disposes of this (11) contention. In that case a dealer sold an automobile to one W. M. Turner under a conditional sales contract, which on the same date was duly assigned to a finance company. The car was seized from Callie Shelton and Sonny Frazier, who were using it for the unlawful removal and concealment of untaxpaid liquor. Callie Shelton and Edith Shelton, his wife, were the real purchasers of the car. W. M. Turner, the apparent purchaser, permitted his name to be used with no idea that he was a party in interest in the car for the sole purpose of accommodating the Sheltons whom he served as customers of an ice company for which he drove a truck. The dealer knew that the Sheltons were the real purchasers and that Turner had only allowed his name to be used, but the finance company purchased the conditional sales contract in good faith, believing that Turner was the purchaser of the car, and having no

knowledge or even suspicion of the true facts until after the car had been seized. Investigation of Turner by the finance company disclosed that he was not a violator and had no reputation of being a violator of the liquor laws. The Sheltons had a record and reputation as violators of such laws. In reversing the District Court, who denied remission or mitigation of forfeiture, Judge Soper, writing the opinion of the Court, said:

“ * * * the three statutory conditions were complied with, and we must decide a question not necessarily involved in the prior decision, (*C. I. T. Corporation v. United States*, 86 F. (2d) 311) that is, whether the District Court is obliged to remit or mitigate a forfeiture when this situation is found to exist. We think that the court is not so restricted in the exercise of its power. The court is not permitted to strike out a forfeiture unless the statutory conditions are met, but even if they are met, the court may still exercise its judgment and in a proper case decline to remit or mitigate the forfeiture. The language of the statute transferring to the court exclusive jurisdiction to exercise a power formerly exercised in the discretion of officials of the Treasury Department (see 26 U. S. C. A. 1624, 1626, 19 U. S. C. A. 532) and forbidding the court to act favorably unless the claimant proves that he has complied with the statute, suggests that no other restrictions upon the court were intended. Nevertheless remission or mitigation of a forfeiture when the statutory conditions are met may not be unreasonably withheld, and in passing upon the question in any case the remedial purpose of the statute must be borne in mind. Manifestly the act was passed to ameliorate the hardships suffered by innocent lienors from the seizure of offending vehicles, and the reference in the third condition of the act to interests of the claimant and of the violator of the law in the vehicle under a contract or agreement shows that Congress had especially in mind the rights of finance companies under conditional sales contracts which undoubtedly constitute the most numerous class to which the act applies. In effect, the act merely restored in modified form the protection afforded to innocent lienors by Section 26 of the National Prohibition Act. See *Richbourg Motor Co. v. United States*, 281 U. S. 528.

"When the facts of the pending case are approached from this viewpoint, we fail to find sufficient reason in the opinion of the court for the denial of the relief prayed. It cannot be found in the fact that the contract of sale was immediately transferred by a guilty dealer to an innocent lienor, for it may not be supposed that as a rule the dealer would be willing to sell his goods on credit to a known violator of the law and thus run the risk of forfeiture, or that the dealer with guilty knowledge would assign the contract to an innocent finance company and run the risk of a disruption of a helpful business arrangement. Indeed if lienors who accept from dealers assignments of conditional sales contracts immediately after the execution of the papers are excluded from the benefits of the act, the purpose of the act to a large extent will be frustrated. It is common practice for automobile dealers promptly to assign conditional sales contracts to finance companies in order to secure at once the proceeds of the sales."

This Court, therefore, cannot refuse to grant the prayer of the claimant for remission or mitigation of forfeiture on this ground.

Counsel for the Government, however, contend that claimant failed to investigate the record and reputation of the fictitious purchaser, Landrum P. Walker, at the headquarters of the principal Federal internal-revenue officer engaged in the enforcement of the liquor laws in the locality where the interest was acquired, and where Landrum P. Walker resided, basing such contention upon the theory that the statute requires that inquiry be made at the headquarters of the sheriff, Chief of Police and principal Federal internal-revenue officer in (13) such locality.

In disposing of this phase of the statute, the Circuit Court of Appeals of the Second Circuit in an opinion in the case of *United States v. One 1935 Dodge Rack-Body truck, etc.* 88 F. (2d) 613, said:

"Inquiry as to reputation of purchaser of motor vehicle need not be made at headquarters of all officers mentioned in statute, but negative response obtained upon inquiry at headquarters of any one of them in each

locality where inquiry must be made will fulfill minimum of conditions precedent to remission or mitigation of forfeiture."

This construction of the statute is supported by the report of the Chairman of the Committee on the Judiciary of the United States Senate on July 29, 1935, and the Chairman of the Committee on the Judiciary of the House of Representatives on July 22, 1935, in relating the purpose and scope of the bill in the following words:

"Certain standards are given to the court to guide it in this determination. Thus, under subsection (b), the claimant must prove that he acquired his interest in good faith, that he had no knowledge or reason to believe that the vehicle or aircraft was being or would be used in violating Federal or State liquor laws, and that, if his interest arises out of, or is subject to, any agreement under which any person having a record or reputation for violating Federal or State liquor laws has a right with respect to the vehicle or aircraft, the claimant, before he acquired his interest, or before the other person acquired his right, whichever of these events occurred later, inquired at the headquarters of *the principal local or Federal law enforcement officer* in the locality where such other person acquired his right, of the locality in which such other person then resided, and of each locality where the claimant made inquiry as to the character or credit standing of such other person, whether the other person had such a record or reputation, and was informed he had not. This last requirement is predicated upon the recognition of the 'bootleg hazard' as an element to be considered in investigating a person as a credit risk. As a matter of sound business practice, automobile dealers, finance companies, and prospective lienholders on automobiles examine records, and make inquiry of references and credit rating agencies as to the owner's or prospective purchaser's reputation for paying his debts and his ability to do so. This subsection merely requires that in the making of such inquiry, the 'bootleg hazard' also be examined as one aspect of the credit risk." (Italic added)

At the hearing on the bill before the Committee on the Judiciary of the United States Senate, August 15,

(14) 1935, a representative of the Treasury Department testifying before the Committee as to the purpose of this section said:

"What this section will do, in the case of any court proceeding for the forfeiture of vehicles or aircraft, is to give the court jurisdiction to determine whether or not the person claiming to have an innocent interest actually had such interest. Under the present practice the Secretary of the Treasury requires such a showing. * * * This section is of particular importance in connection with the discounting by a finance company of an automobile dealer's paper.

"At the present time, the Secretary of the Treasury considers that the bootleg hazard is an element involved in the credit risk, and is just as much a part of the investigation by the finance company of a person as a credit risk as is his financial standing in the community. He requires that before a car be returned to the person claiming an innocent interest, the latter must prove that he made an investigation as to whether or not the purchaser had a bootlegger record, and found that he had none."

The claimant made inquiry at the headquarters of the principal local enforcement officer in the locality where the interest was acquired and where L. P. Walker resided. Therefore, the three statutory conditions have been complied with by the claimant, and since there does not appear to be any fact growing out of the testimony requiring the court to decline to remit or mitigate the forfeiture the prayer of the claimant must be and is granted.

Counsel may present in due course an appropriate order in accordance with the views expressed in this opinion.

C. C. WYCHE,
United States District Judge.

June 4, 1937.

ORDER.

(15) Filed June 26, 1937.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF SOUTH CAROLINA.

United States of America,

vs.

L/2612

One 1936 Model Ford V-8 DeLuxe
Coach, Motor No. 18-3306511—
Owned or supposed to be owned
by Benjamin Guy Walker and
Archie Williams.

The above-entitled matter was commenced by Petition of the United States of America, praying for the forfeiture of the defendant automobile. The forfeiture was ordered and the Commercial Credit Company filed its Petition for remission or mitigation of the forfeiture. The matter was heard by me without a jury (jury trial having been waived by both parties), and on the 5th day of June, 1937, my Opinion as to the claim of the Commercial Credit Company for remission or mitigation was filed with the Clerk of the United States District Court for the Western District of South Carolina, which Opinion is hereby incorporated and made a part of this Order.

NOW, therefore, upon motion of Hicks & Johnston, Attorneys for the Claimant, Commercial Credit Company, it is,

ORDERED:

THAT the defendant automobile be and the same is hereby released unto the Commercial Credit Company, according to its interest therein; and that the Commercial Credit Company pay all costs and expenses incident to the seizure and forfeiture which have been incurred by the United States of America.

/s/ C. C. WYCHE,

United States District Judge.

Spartanburg, S. C.,
June 26, 1937.

**PLAINTIFF'S EXCEPTIONS TO OPINION AND
ORDER OF COURT.**

(17) Filed July 23, 1937.

(Style of Court and Title Omitted.)

Now comes the United States of America, by O. H. Doyle, United States Attorney for the Western District of South Carolina, and excepts in the following particulars to the Court's opinion and order in the above entitled case:

(1) That plaintiff, United States of America, excepts to the Court's ruling that claimant, Commercial Credit Company, established by greater weight of the evidence its right to remission or mitigation of forfeiture of the automobile involved in this case.

(2) That plaintiff excepts to His Honor's ruling that showing made by claimant as to its investigation of prospective purchaser was a sufficient compliance with the statute.

(3) That plaintiff excepts to His Honor's ruling that the duty was not on claimant to investigate the real purchaser of said automobile and that investigation of the fictitious purchaser or straw purchaser was sufficient.

(4) That the plaintiff excepts to His Honor's ruling that knowledge on the part of Greenville Auto Sales, Incorporated, who sold the automobile to the purchaser and (18) in turn sold the conditional sales contract covering said purchase to the claimant, was not imputed to the claimant, Commercial Credit Company.

(5) That the plaintiff excepts to His Honor's ruling that the facts taken from the testimony in this case are not sufficient to require the Court to decline to remit or mitigate the forfeiture.

Respectfully submitted:

O. H. DOYLE.

United States Attorney.

Greenville, S. C.

June 26, 1937.

The above exceptions noted and allowed.

C. C. WYCHE,
United States District Judge.

June 26, 1937.

ORDER EXTENDING TIME FOR SERVING, SETTLING AND ALLOWING BILL OF EXCEPTIONS.

(19) Filed July 10, 1937.

(Style of Court and Title Omitted.)

Upon motion of O. H. Doyle, United States Attorney for the Western District of South Carolina, pending receipt by him of instructions from the Attorney General as to whether an appeal will be authorized,

IT IS ORDERED: That the time for serving, settling and allowing bill of exceptions in the above entitled case be, and the same is hereby extended for a period of sixty (60) days from July 26, 1937.

/s/ C. C. WYCHE,
United States District Judge.

Spartanburg, S. C.
July 10, 1937.

ASSIGNMENTS OF ERROR.

(20) Filed August 25, 1937.

(Style of Court and Title Omitted.)

Now comes the United States of America, by O. H. Doyle, United States Attorney for the Western District of South Carolina, and in connection with it's petition for appeal in the above entitled case assigns the following errors in the decision and order by the Court:

1. That the Court erred in holding that claimant, Commercial Credit Company, established by greater weight of the evidence its right to remission or mitigation of forfeiture of the automobile involved in this case.

2. That the Court erred in holding that showing made by claimant as to its investigation of prospective purchaser was a sufficient compliance with the statute.

3. That the Court erred in holding that the duty was not on claimant to investigate the real purchaser of said automobile and that investigation of the fictitious purchaser or straw purchaser was sufficient.

4. That the Court erred in holding that knowledge on (21) the part of Greenville Auto Sales, Incorporated, who sold the automobile to the purchaser and in turn sold the conditional sales contract covering said purchase to the claimant, was not imputed to the claimant, Commercial Credit Company, at the time the conditional sales contract was accepted by the Commercial Credit Company.

5. That the Court erred in holding that the Greenville Auto Sales, Incorporated, by accepting payment on the conditional sales contract from the real purchaser and known violator of the law, did not then become agent of the Commercial Credit Company to the extent that knowledge on the part of Greenville Auto Sales, Incorporated, would be imputed to the Commercial Credit Company.

6. That the Court erred in holding that the facts taken from the testimony in this case are not sufficient to require the Court to decline to remit or mitigate the forfeiture.

7. Other errors of law apparent on the face of the record.

WHEREFORE, the United States of America prays that the judgment of the District Court be reversed, and that judgment be rendered in favor of the United States of America.

O. H. DOYLE,
United States Attorney.

Greenville, S. C.,
August 16th, 1937.

BILL OF EXCEPTIONS.

(22) Filed August 31, 1937.

(Style of Court and Title Omitted.)

BE IT REMEMBERED that on the 3rd day of May, 1937, this matter was heard by Honorable C. C. Wyche, United States District Judge for the Western District of South Carolina, counsel having agreed that the cause be heard by Judge Wyche without a jury. By stipulation between counsel it is admitted that the forfeiture was regular in all respects, and the only issue raised before His Honor, Judge Wyche, was the claim for remission or mitigation of the forfeiture, filed by Commercial Credit Company. The Judge heard the evidence in the case, and by agreement of counsel the testimony was not taken, but that the Judge would find the facts. The following portion of the Judge's opinion, which constitutes his findings of fact, is, by agreement of counsel, the facts in this case:

"The Ford automobile was sold by the Greenville Auto Sales, Incorporated (hereinafter referred to as the dealer) on October 3, 1936, through its agent, to Benjamin Guy Walker, who in part payment of the purchase price of the Ford Automobile exchanged an old car paid for by him, but registered in his wife's name. He was given terms for the payment of the purchase price under a conditional sales contract, but the contract, drawn by an agent of the dealer, was made in the name of his brother, Landrum P. Walker, who formally executed the agreement by signing it "L. P. Walker", and who was commonly known as Paul Walker. Benjamin Guy Walker and his wife at the time of the sale were having some domestic infelicities and he had the conditional sales contract drawn and executed in the name of his brother in order to place the title of the new automobile "where his wife could not reach it". Landrum P. Walker had no interest in the transaction except to comply with the request of his brother. Guy Walker made the transaction with the dealer through its agent, Mr. Elrod. He selected the car he wanted, made the agreement and handled the

transaction himself. Paul Walker drove the car from the place of business of the dealer. Guy Walker at the time, and for two or three weeks after the purchase of the car, was living at the home of his brother. Only one payment was made on the conditional sales contract before the seizure, and that was made by Guy Walker to the dealer.

"It was admitted by all the parties that Benjamin Guy Walker had a previous record and a reputation for violating both the state and federal laws relating to liquor. His brother, Paul Walker, was convicted of violating the National Prohibition Act in 1929, and was duly sentenced therefor in this court, but his record and reputation since serving the sentence imposed were good.

"On the date the sale was consummated the dealer submitted the contract to the Commercial Credit Company, the claimant here, who accepted by telephone, and subsequently on October 5th, in the usual course of business the dealer assigned the contract to the claimant and received a check for the same.

The claimant before accepting the assignment of the sales contract from the dealer made an investigation of Landrum P. Walker by inquiring at the headquarters of the Sheriff of Greenville County, and at the headquarters of the Chief of Police of the City of Greenville, the county and city where the interest was acquired, and the locality where Landrum P. Walker resided, as to the record and reputation for violation of the liquor law by Landrum P. Walker. The information was received from such offices that Landrum P. Walker had no such record or reputation. The information was given, however, from the Sheriff's office that Guy Walker had both a record and reputation as a violator of the state and federal laws relating to liquor. No inquiry or investigation was made at the headquarters of the principal Federal Internal Revenue officer engaged in the enforcement of the liquor laws in that locality, or at the headquarters of any other principal local or federal law enforcement officer of the locality as to Paul Walker, and no inquiry or investigation whatsoever was made of Benjamin Guy Walker, the admitted real owner and purchaser of the automobile.

"The claimant had Landrum P. Walker investigated in August, 1936, by the Business Service Bureau of Greenville, South Carolina, in connection with his purchase of a refrigerator. However, no investigation at that time was made as to whether or not he had a reputation or record for violating the liquor laws; the investigation did disclose that he had a good reputation in the community where he lived, and such was the reputation given him by his employer at that time.

"The claimant purchased the conditional sales contract in good faith, believing that Landrum P. Walker was the purchaser and owner of the automobile. It had no knowledge, information or suspicion of the true facts until after the automobile had been seized by federal officers.

"The automobile is subject to forfeiture under the statute. (26 U. S. C. A., 1441) *Grant v. United States*, 254 U. S., 505, 41 S. Ct. 189, 65 L. Ed. 376; *United States v. One Ford Coupe Automobile*, 272 U. S., 321, 329, 47 S. Ct. 154, 71 L. Ed., 279, 47 A. L. R. 1025.

"The claimant asks for remission or mitigation of forfeiture on the ground that it is an innocent purchaser of the contract in good faith, without any knowledge or reason to anticipate an illegal use of the car, and relies upon the recent Act of Congress, known as Liquor Repeal and Enforcement Act of August 27, 1935, 49 Stat. 872, Sec. 204 (27 U. S. C. A., 40a)."

By the opinion of the Court above referred to the Trial Judge granted the claim of the Commercial Credit Company for remission and mitigation of the forfeiture, and the United States of America, by O. H. Doyle, United States Attorney for the Western District of South Carolina, made certain exceptions to the Court's ruling. Said exceptions were noted and allowed by the court.

**STIPULATION AND AGREEMENT AS TO BILL OF
(25) EXCEPTIONS.**

It is hereby stipulated and agreed by and between counsel for each side that the foregoing shall constitute and be the *fil* of exceptions in the record on appeal in this case, and the same is respectfully submitted to the Trial Judge for settlement and allowance.

(Signed) HICKS & JOHNSTON,
Attorneys for Claimant,
Commercial Credit Company.

O. H. DOYLE,
United States Attorney.

Due and legal service of Bill of Exceptions accepted this 26 day of August, 1937.

(Signed) HICKS & JOHNSTON,
Attorneys for Claimant,
Commercial Credit Company.

**ORDER SETTLING AND ALLOWING BILL OF
EXCEPTIONS.**

The foregoing Bill of Exceptions, as prepared and agreed upon by both sides, is hereby settled and allowed, and ORDERED to be made a part of the appeal record in this case,

(Signed) C. C. WYCHE,
United States District Judge,

Spartanburg, S. C.,
August 31, 1937.

**STIPULATION TO PREPARE TRANSCRIPT OF
RECORD AND PRINT SAME UNDER RULE 23
OF THE UNITED STATES CIRCUIT COURT OF
APPEALS.**

(26) Filed August 31, 1937.

(Style of Court and Title Omitted.)

It is hereby stipulated and agreed that the clerk of this court shall make up a transcript of the record in the above styled cause, and transmit the same to the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Va.; and that it be printed under the supervision of the Clerk of that Court, in accordance with Rule 23.

O. H. DOYLE,
United States Attorney,
Counsel for Appellant.

/s/ HICKS & JOHNSTON,
Counsel for Appellee.

August 26th, 1937.

1. Stipulation of Counsel;
2. Return to Libel;
3. Opinion of Court;
4. Judgment of Court;
5. Plaintiff's exceptions to Opinion and Judgment;
6. Order extending jurisdiction;
7. Assignments of error;
8. Bill of exceptions;
9. Stipulation to Prepare Transcript of Record;
10. Memorandum;
11. Clerk's Certificate.

(27)

MEMORANDUM.

- (1) Petition for appeal filed August 25, 1937.
- (2) Appeal allowed August 17, 1937—filed August 25, 1937.
- (3) Citation dated August 31, 1937—Acceptance of Service dated August 31, 1937.
- (4) Copy of order allowing appeal lodged for adverse party August 25, 1937.

(28)

CERTIFICATE OF CLERK.

DISTRICT COURT OF THE UNITED STATES OF AMERICA
WESTERN DISTRICT OF SOUTH CAROLINA.

I, W. D. White, Clerk of the District Court of the United States for the Western District of South Carolina, do hereby certify that the writings annexed to this certificate, composed of twenty-seven (27) pages, being the Transcript of Record of all proceedings as agreed upon by counsel in the case of United States of America, Appellant, versus One 1936 Model Ford V-8 DeLuxe Coach, Motor No. 18-3306511—owned or supposed to be owned by Benjamin Guy Walker and Archie Williams, Appellee, Docket No. L/2612 have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

In Testimony Whereof, I have hereunto subscribed my name and affixed the Seal of the said Court at the City of Greenville, in the Western District of South Carolina, this 9th day of September, in the year of our Lord One Thousand Nine Hundred and Thirty-seven, and of the Independence of the said United States the One Hundred and Sixty-second.

(SEAL)

W. D. WHITE,
W. D. WHITE, Clerk.



PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FOURTH CIRCUIT

No. 4243

UNITED STATES OF AMERICA, APPELLANT

vs.

ONE 1936 MODEL FORD V-8 DeLuxe Coach, Motor No. 18-3306511—
OWNED OR SUPPOSED TO BE OWNED BY BENJAMIN GUY WALKER AND
ARCHIE WILLIAMS, APPELLEE

Appeal from the District Court of the United States for the Western
District of South Carolina, at Greenville

September 10, 1937, the transcript of record is filed and the cause
docketed.

Same day, the original petition for appeal, order allowing appeal,
and citation are certified up under section 7 of Rule 14.

Same day, the appearance of O. H. Doyle, United States Attorney,
is entered for the appellant.

September 14, 1937, the appearance of E. P. Riley and Thomas A.
Wofford, Assistant U. S. Attorneys, is entered for the appellant.

September 15, 1937, the appearance of John Wilbur Hicks and
John E. Johnston is entered for the appellee.

October 7, 1937, twenty-five copies of the printed record are filed.

November 8, 1937, the appearance of Duane R. Dills and E. E.
Heaton is entered for the appellee.

Argument of cause

November 9, 1937 (November term, 1937), cause came on to be
heard before Parker and Soper, Circuit Judges, and Coleman, Dis-
trict Judge, and is argued by counsel and submitted.

United States Circuit Court of Appeals, Fourth Circuit

No. 4243

UNITED STATES OF AMERICA, APPELLANT

vs.

ONE 1936 MODEL FORD V-8 DELUXE COACH, MOTOR NO. 18-3306511—
OWNED, OR SUPPOSED TO BE OWNED BY BENJAMIN GUY WALKER AND
ARCHIE WILLIAMS, APPELLEE

Appeal from the District Court of the United States for the Western
District of South Carolina, at Greenville. At law

(Argued November 9, 1937. Decided January 4, 1938)

Opinion

Filed January 4, 1938

Before PARKER and SOPER, Circuit Judges, and COLEMAN,
District Judge

Thomas A. Wofford, Assistant U. S. Attorney, and Oscar H. Doyle, U. S. Attorney (Edward P. Riley, Assistant U. S. Attorney, on brief), for Appellant, and Eugene E. Heaton; Hicks & Johnston, and Dills, Muecke Schelker & Levanson, for Appellee.

SOPER, Circuit Judge: The question in this case is whether the District Judge was justified in remitting the forfeiture of an automobile which had been seized by federal officers while being used by one B. G. Walker for the unlawful transportation of distilled spirits in violation of R. S. Section 3450, 26 U. S. C. A. 1156, 1441. The automobile was sold on October 3, 1936, at Greenville, South Carolina, to one L. P. Walker by a dealer for the sum of \$845, of which \$325 was paid, leaving a balance due of \$520, evidenced by a promissory note which was secured by a conditional sales contract. The note and contract were assigned for value by the dealer to the Commercial Credit Company. The Credit Company believed that L. P. Walker was the purchaser and owner of the vehicle, but as a matter of fact he was only the nominal purchaser and was acting for his brother, B. G. Walker, who had a previous record and reputation for violating both the State and Federal laws relating to intoxicating liquor. L. P. Walker, the nominal purchaser, had also been convicted of violating the National Prohibition Act in 1929 and had been sentenced therefor, but his subsequent record and reputation had been good. The Credit Company, before accepting the assignment of the sales contract, made an investigation of L. P. Walker by inquiry at the headquarters of the sheriff of Greenville County, South Carolina, and of the chief of police of the city of Greenville, South Carolina, where L. P. Walker resided and where

the contract of sale was signed. The Credit Company was informed that he had no record or reputation for violation of the liquor laws. Information was received from the sheriff's office as to the bad record and reputation of B. G. Walker, but his relationship to L. P. Walker was not disclosed or suspected. No inquiry was made by the Credit Company at the headquarters of the principal federal internal revenue officer engaged in the enforcement of the liquor laws, or of any other principal local or federal law enforcement officer of the locality.

Under these circumstances, the Credit Company made claim for a remission of the forfeiture and the District Judge concluded that it was entitled thereto under the decision of this court in *C. I. T. Corporation vs. United States*, 89 F. (2d) 977, where we considered the power of the District Court to remit forfeitures and the duty of the lienor to make inquiries in cases of this sort under the Liquor Law Repeal and Enforcement Act of August 27, 1935, 49 Stat. 872, Sec. 204, 27 U. S. C. A. 40 (a). The government contends that the claimant failed to comply with the conditions imposed upon it by sub-section (b) of the act in that (1) it did not prove that it had no reason to believe that the car would not be used in violation of the liquor laws, since the circumstances were such as to call for an investigation which, if made, would have disclosed the true ownership of the car; and (2) that the claimant had not made an inquiry as to the record and reputation of the purchaser of the car of all of the state and federal officials listed in that sub-section of the act.

We are of opinion that the judgment of the District Court should be affirmed. The statute does not require the lienor in transactions of this kind to investigate the purchase of an automobile under a mortgage or conditional sales contract in order to ascertain whether the automobile is being used or will be used in violation of laws relating to intoxicating liquor, unless the lienor has some knowledge or reason to believe that such is the case. It is conceded here that on the day of the sale the dealer submitted the contract to the claimant and two days later assigned the contract to it in the usual course of business; that the claimant in the meantime made the investigation described above and then purchased the contract in good faith, believing L. P. Walker to be the purchaser and owner and without knowledge, information, or suspicion of the true facts. The claimant therefore complied with the conditions of sub-section (b) (1) and (2), for it had acquired its interest in the vehicle in good faith, and had neither knowledge nor reason to believe that it would be illegally used. There was nothing to show that L. P. Walker was not the real purchaser of the car or that seven years before he had violated the National Prohibition Act. The claimant, in our opinion, should not be charged with constructive notice of his conviction shown by the records of the United States Court, as suggested in *Universal Credit Company vs. United States*, 91 F. (2d) 388, 391, because the statute does not direct an inspection of the court records but merely an inquiry at the headquarters of certain law enforcement officer.

Nor was the information received from one of the officials that another Walker had a criminal record sufficient to put the claimant on further inquiry in the absence of any knowledge or reason to suspect his relationship to the ostensible purchaser or his interest in the car. The involved language of sub-section (b) (3) of the act does permit the possible interpretation that the lienor is charged with the duty of making inquiry as to every one, bearing a bad reputation or record, who may have a right under the contract of sale, whether or not it appears on the face of the instrument. See *Federal Motor Finance vs. United States*, 88 F. (2d) 90. But in our view Congress did not intend to impose upon the lienor the obligation to ascertain at his peril the identity of every person having an interest in the property and to make inquiry of the law enforcement officers as to the previous record and reputation of every such person, unless from the documents themselves or other surrounding circumstances the lienor possesses information which would lead a reasonably prudent and law abiding person to make a further investigation.

The claimant also complied with the conditions set out in sub-section (b) (3) of the statute. It does not require, in the event that the purchaser has a record or reputation for violating the liquor laws, that the lienor shall make inquiry of all of the officials mentioned in subsection (b) (3) of the act. They are listed in the disjunctive and it is sufficient if the lienor makes inquiry at the headquarters of one of the named officials, that is, the sheriff, the chief of police, the principal internal revenue officer engaged in the enforcement of the liquor laws, or other principal local or federal law enforcement officer; provided, however, that the inquiry is made of such an official (1) in the locality where the purchaser acquired his right under the contract, and (2) in the locality where the purchaser resides, and (3) in every other locality where the lienor has made any other inquiry as to his character or financial standing. See *United States vs. One Dodge Rack Body Truck*, 88 F. (2d) 613.

We reiterate the opinion expressed in our former decision that the District Court is not obliged to remit or mitigate a forfeiture in every case in which the lienor has complied with the statutory conditions, but that the court in such event may still exercise its judgment and decline to relieve the lienor when reasonable grounds for such action are found to exist. Compare *Universal Credit Co. vs. United States*, 91 F. (2d) 388, 390. Such grounds might be deemed to exist if it should be found to be a practice of automobile dealers or their agents to conspire with purchasers, known to be violators of the liquor laws, to conceal their interest in the transactions from the Finance Companies accepting assignments of the conditional sales contracts. In the pending case, however, the District Court, considering all of the circumstances, concluded that the power to remit the forfeiture should be exercised and we find nothing in the record to suggest that the power has been misused.

Affirmed.

United States Circuit Court of Appeals, Fourth Circuit

No. 4243

UNITED STATES OF AMERICA, APPELLANT

vs.

ONE 1936 MODEL FORD V-8 DeLuxe Coach, Motor No. 18-3306511—
OWNED, OR SUPPOSED TO BE OWNED BY BENJAMIN GUY WALKER AND
ARCHIE WILLIAMS, APPELLEE

Judgment

Filed and Entered January 4, 1938

Appeal from the District Court of the United States for the Western District of South Carolina.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of South Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

January 4, 1938.

MORRIS A. SOPER,

U. S. Circuit Judge.

January 25, 1938, petition of appellant for a stay of the mandate is filed.

Order staying mandate

Filed January 26, 1938

(Style of Court and Title Omitted)

Upon the application of the Appellant, by its attorney, O. H. Doyle, U. S. Attorney, and for good cause shown,

It is ordered that the mandate of this Court in the above entitled cause be, and the same is hereby, stayed pending the application of the said Appellant in the Supreme Court of the United States for a writ of certiorari to this Court, unless otherwise ordered by this or the said Supreme Court, and provided said application is filed in the said Supreme Court within 30 days from this date.

January 26, 1938.

JOHN J. PARKER,

Senior Circuit Judge.

Clerk's certificate

UNITED STATES OF AMERICA,

Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause, as the same remain upon the records and files of the said Circuit Court of Appeals.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 15th day of February A. D. 1938.

[SEAL]

CLAUDE M. DEAN,

*Clerk, U. S. Circuit Court of Appeals,**Fourth Circuit.*

Supreme Court of the United States

Order allowing certiorari

Filed April 4, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice BUTLER and Mr. Justice STONE took no part in the consideration or decision of this application.

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